

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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VICENTE RAUL FUENTES,

Plaintiff,

-against-

AAA WEST AAA, LLC,

REPORT AND
RECOMMENDATION
23 CV 2489 (OEM)(RML)

Defendant.

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LEVY, United States Magistrate Judge:

Plaintiff Vicente Raul Fuentes (“plaintiff”) commenced this action on March 31, 2023, asserting claims under the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*, the New York Labor Law, §§ 190, *et seq.*, the New York State Human Rights Law, N.Y. EXEC. LAW §§ 291, *et seq.*, the New York City Human Rights Law, N.Y.C. ADMIN. CODE. §§ 8-101, *et seq.*, and New York common law. (See Complaint, dated Mar. 31, 2023, Dkt. No. 1.) After conducting an initial conference on November 7, 2023, I referred this case to mediation. (See Minute Entry, dated Nov. 7, 2023.)

Plaintiff’s counsel filed a motion to withdraw on February 6, 2024. (See First Motion to Withdraw as Attorney, dated Feb. 6, 2024, Dkt. No. 18.) In support of the motion, plaintiff’s counsel stated in an affidavit that “irreconcilable differences have arisen between [the] firm and [p]laintiff, the [sic] communication has completely broken down and [the firm] can no longer represent [plaintiff].” (*Id.*) By order dated March 4, 2024, I deferred ruling on counsel’s motion and directed counsel to specify their reasons for moving to withdraw and explain “how counsel has not received a ‘meaningful response’ to their communication with plaintiff announcing their intent to withdraw.” (See Order, dated Mar. 4, 2024). After reviewing counsel’s *in camera* submission, I granted the motion and directed plaintiff to advise the court by

August 31, 2024, whether he wished to continue with this litigation, and if so, to obtain new counsel or be prepared to proceed *pro se* at the next telephone conference scheduled for September 10, 2024. (See Order, dated July 5, 2024.) In the same order (“The Order”) I warned plaintiff that failure to appear or advise the court by August 31, 2024 whether he wished to continue this lawsuit would likely result in sanctions, including dismissal for failure to prosecute. (Id.) On July 8, 2024, counsel served The Order upon plaintiff at his last known address. (See Affidavit of Service, dated July 8, 2024, Dkt. No. 20.)

Plaintiff failed to appear for the telephone conference on September 10, 2024. (See Minute Entry, dated Sept. 11, 2024.) To date, the court has received no communication from plaintiff. Since plaintiff has abandoned this case, I respectfully recommend that it be dismissed for lack of prosecution.

Any objection to this Report and Recommendation must be filed with the Clerk of the Court, with a courtesy copy to the Honorable Orelia E. Merchant, United States District Judge, within fourteen (14) days. Failure to file objections in a timely manner may waive a right to appeal the district court’s order. See 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 6(d), 72.

Respectfully submitted,

/s/
ROBERT M. LEVY
United States Magistrate Judge

Dated: Brooklyn, New York
September 24, 2024